JOINT SELECT COMMITTEE REPORTS OF LEGISLATIVE ASSEMBLY - 1923

The Civil Marriage (Amendment) Bill

List of Reports of Select or Joint Committees presented in the Legislative Assembly in 1923.

Serial No.	Short title of the Bill.	Date of presentation.	Remarks.
1.	The Cotton Transport Bill.	15.1.23.	Reports of the Joint Committees
2.	The Cantonment(House Accommodation)Amendment Bill.	15.1.23.	
3.	The Indian Boilers Bill.	15.1.23.	
4.	The Indian Mines Bill.	16.1.23.	
5.	The Workmen's Compensation Bill.	24.1.23.	
6.	The Indian Official Secrets Bill.	31.1.23.	
7.	The Married Women's Property Bill by Mr.B.S.Kamat.	8.2.23.	
8.	The Indian Penal Code(Amendment) Bill(White Slave Traffic)	8.2.23.	
[illegible]		[illegible]	
9.	The Indian Cotton Cess Bill.	14.2.23.	-do-
10.	The Code of Civil Procedure(Amendment) Bill by Dr.Hari Singh Gour.	20.2.23.	
11.	The Hindu Law of Inheritance(Amendment) Bill by Mr.T.V.Seshagiri Ayyar.	14.3.23.	No Copy avai
12.	The Exclusion from Inheritance Bill by Mr.T.V. Seshagiri Ayyar.	14.3.23.	
13.	The Code of Criminal Procedure(Amendment) Bill (Sec.4) By Mr.Abul Kasem.	14. 3.23.	
14.	The Civil Marriage (Amendment) Bill by Dr.Hari Singh Gour.	14. 3.23.	
15.	The Mussalman Wakf Registration Bill by Mr.Abul Kasem.	15.3.23.	
16.	The Abolition of Transportation Bill.	3. 7.23.	
17.	The Indian Stamp (Amendment) Bill.	10.7.23.	
18.	The Indian Naturalization Bill.	10.7.23.	
19.	The Land Acquisition (Amendment) Bill.	10.7.23.	
20.	The Cantonments Bill.	18.7.23.	
21.	The Code of Civil Procedure(Amendment) Bill by Lala Girdhari Lal Agarwal.	24.7.23.	
22.	The Legal Practitioners Bill by Mr.K.C.Neogy.	24.7.23.	
23.	The Illegitimate Sons' Rights Bill.by Mr.V.K. Reddi Garu.	27.7.23.	

We, the undersigned, Members of the Select Committee, to which the Bill further to amend the Special Marriage Act, 1872, was referred, have considered the Bill and the papers noted in the margin and have now the honour to submit this our Report with the Bill as amended by us annexed thereto.

Paper No. I (Opinions Nos. 1—15).

2. The first question which we considered was as to the communities to which the proposed legislation should be applied. We are agreed that the Christian, Muhammadan, Jewish and Parsi communities should be excluded from the scope of the Bill which should be expressly limited to those cases where the parties to a marriage belong to that portion of the public which is comprised of the Hindu, Sikh, Jaina and Buddhist communities. Some of us are doubtful whether Buddhists should be included, but the majority are of opinion that they should be included, as Indian Buddhists, equally with Sikhs and Jainas, have been held by the Courts to be Hindus for purposes of succession, marriage, and other matters.

3. We consider it essential, however, that marriages under the Bill should be treated as a separate class of marriages distinct from those for which the existing Act already provides, namely, marriages between persons who do not profess the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh or Jaina religion. This is necessary to avoid interference with the rights of those communities (*e.g.*, Brahmos) to whom the Act has applied since 1872.

4. We are unanimously of opinion that the Bill should be permissive and that marriages under it should be strictly monogamous, but, as this is already provided for in the Special Marriage Act, 1872, we do not think any express provision is necessary in the Bill.

5. We next considered the question of coparcenary rights in a Hindu joint family. Jointness being the normal condition of the Hindu family, we think that the Bill should provide expressly for the effect of a marriage under the Bill upon the jointness of the family. We hold the view that such a marriage should *ipso facto* have the result of breaking up the jointness of the family, and we have accordingly provided that when a member of a joint family contracts a marriage under the Bill, the legal effect of such marriage will be to bring about his separation from the family.

6. We are of opinion that the rights of succession of any party under the Bill or of the issue of such marriage should not be affected by reason only of the marriage. We can see no reason why a marriage under the Bill should place either the parties of such marriage or their issue in either a better or a worse position than a person whose rights of inheritance are saved by the Caste Disabilities Removal Act, 1850. We are, however, unanimously of opinion that neither of two persons marrying under the Bill nor their issue shall be entitled to shebaitships or to any family religious offices or to participation in any family charities of a religious nature.

7. With regard to the question of succession to the property both of a person who marries under the Bill and of the issue of such marriage, our opinions are divided, but the majority of us are agreed that the provisions of the Indian Succession Act, 1865, should apply to such cases.

8. We are further of opinion that parties to such marriages should have no rights of adoption. We also think it necessary to provide that where an only son contracts a marriage under the Bill, his parent should for the purposes of adoption be regarded as a person without issue and should have the right to adopt a son.

9. The Bill was published in the Gazette of India, dated the 2nd April, 1921.

10. To give effect to the above conclusions, it has been necessary to recast the Bill. The alterations, however, which we have made considerably reduce the scope of the original Bill which embraced all communities in India. Moreover, we think that all reasonable and legitimate objections urged against the original Bill in the opinions received on it have been sufficiently met, and we are therefore agreed that the re-publication of the Bill is not necessary. We therefore recommend that it be passed as now amended.

W. M. HAILEY.

N. M. SAMARTH.

T. RANGACHARIAR.

N. M. JOSHI.

JAMNADAS DWARKADAS.

T. V. SESHAGIRI AYYAR.

DARCY LINDSAY.

A. B. LATTHE.*

H. S. GOUR.

DELHI;
The 14th March, 1923.

* Subject to minute of dissent.

Minute of Dissent.

Though I support the principle of the Bill, I am entirely opposed to it as amended by the Select Committee. Marriages under this Bill, if passed, will make parties to them more non-Hindu than they become under the law as it stands at present. I also think that the Bill as now put forward ought to be republished.

A. B. LATTHE.

Dated the 14th March, 1923.

[As amended by the Select Committee.]

(Words printed in italics indicate the amendments suggested by the Committee.)

A

BILL

Further to amend the Special Marriage Act, 1872.

Whereas it is expedient further to amend the Special Marriage Act, 1872; It is hereby III of 1872.
enacted as follows :—

Short title.

1. This Act may be called the *Special* Marriage (Amendment) Act, 1923.

Amendment of preamble, Act III of 1872.

2. In the preamble *to the Special Marriage* Act, 1872 (hereinafter referred to as the said Act) *after the words "Jaina religion" the following words shall be inserted, namely* : —

"and for persons who profess the Hindu, Buddhist, Sikh or Jaina religion".

Amendment of section 2, Act III of 1872.

3. In section 2 of the said Act, *after the words* "Jaina religion" the following words shall be *inserted*, namely :—

"each of whom professes one or other of the following religions, that is to say, the Hindu, Buddhist, Sikh and Jaina religions".

Addition of new sections to Act III of 1872.

4. *After section 21 of the said Act the following sections shall be inserted, namely :—*

Effect of certain marriages on coparcenary.

"22. The marriage under this Act of any member of an undivided family who professes the Hindu, Buddhist, Sikh or Jaina religion shall be deemed to effect his severance from such family.

Rights of succession in certain cases of marriage under Act.

23. A person professing the Hindu, Buddhist, Sikh or Jaina religion who marries under this Act shall have the same rights and be subject to the same disabilities in regard to any right of succession to any property as a person to whom the Caste Disabilities Removal Act, 1850, applies : XXI of 185

Provided that nothing in this section shall confer on any person any right to any religious office or service, or to the management of any religious or charitable trust.

Succession to the property of parties married under Act.

24. Succession to the property of any person professing the Hindu, Buddhist, Sikh or Jaina religion, who marries under this Act, and to the property of the issue of such marriage, shall be regulated by the provisions of the Indian Succession Act, 1865. X of 186

Person marrying under Act not to have right of adoption.

25. *No person professing the Hindu, Buddhist, Sikh or Jaina religion who marries under this Act shall have any right of adoption.*

Adoption by father of person marrying under Act.

26. *When a person professing the Hindu, Buddhist, Sikh or Jaina religion marries under this Act, his father shall, if he has no other son living, have the right to adopt another person as a son under the law to which he is subject.*"

Amendment of Second Schedule to Act III of 1872.

5. *In the Second Schedule to the said Act, after the words* "*Jaina religion*" *in both places where they occur, the following shall be inserted, namely :—*

"or (*as the case may be*) I profess the Hindu, *or* the Buddhist, *or* the Sikh, *or* the Jaina religion".

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

Report of the Select Committee on the Bill further to amend the Special Marriage Act, 1872, with the Bill as amended.

Sgil I, Delhi—I—500—14-3-25—760.